IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

Crl.Rev.Pet.No. 774 of 2000()

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CC.293/1999 of ADDL.CHIEF JUDICIAL MAGISTRATE COURT, THALASSERY

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REVN. PETITIONER(S):

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U.KUNHIRAMAN, S/O.ACHUTHAN, AGED ABOUT 72 YEARS,
RESIDING IN MAMPILLY HOUSE, PALAYAD, THALASSRY.

BY ADV. SRI.V.RAJAGOPAL

RESPONDENT(S):

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1. STATE REP. BY S.I. OF POLICE, DHARMADAM.

2.N.P.F.ABOOBAKKER, AGED ABOUT 48 YEARS,
S/O.MODU, MADHURAMPALATHIL HOUSE,
P.O.AZHIKODE.

3.ABDUL MAJEED, S/O.ABOOBAKER KOYA,
AGED ABOUT 40 YEARS, DRIVER, KOZHIKODE.

PUBLIC PROSECUTOR SRI.K.C.SURESHKUMAR.

ADV. SRI.SUNNY MATHEW FOR R2

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 12/03/2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**K.HEMA, J.**

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**Crl. R.P. No.774 of 2000**

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**Dated 12th March, 2007.**

**O R D E R**

This revision petition is filed by de facto complainant challenging the order of acquittal passed in favour of respondents 2 and 3.

2. On a First Information Statement given by PW1, de facto complainant/revision petitioner, a crime was registered against accused and others alleging offences under Sections 379 and 34 of Indian Penal Code for having committed theft of a bus belonging to PW1. According to PW1, the bus was parked in his courtyard and on 03.02.1996 at about 3.00 a.m the bus was driven away and stolen by respondents 2 and 3 and others. The cleaner of the bus PW3 was also present in the bus at that time and he was dropped on the way.

3. On an analysis of the evidence on record, trial court found the evidence of PW1 to be not believable regarding long delay in lodging First Information Report. The incident allegedly took place on 03.02.1996 at 3.00 a.m. As per the evidence of PW1, he had seen the bus being driven away from his courtyard. On hearing some sound, he woke up and looked through the window. It is also stated by him that his cleaner was present in the bus at that time and he had informed him on the very same day about the incident. As per the evidence of PW3 cleaner, he identified the accused on the same day at the time of occurrence and he had conveyed the information to PW1.

4. But, First Information Report was lodged only on

08.02.1996 after about five days of the incident. PW1 did not give a satisfactory explanation for the delay. The court found that his explanation is not acceptable. In this connection, the defence set up by accused also is relevant. According to accused, bus was taken possession of by financiers, since there was default in payment of higher purchase installments. But, respondents 2 and 3 were falsely implicated with the ulterior motive and this could be the cause for the delay.

5. PW1 was cross examined regarding higher purchase agreement and the amount due as per the said agreement, but he admitted that there was a higher purchase agreement relating to the bus which was allegedly stolen. When a question was put to him regarding the terms and conditions in the agreement that if there is default in payment of installments, the financier can repossess the vehicle, PW1 only pleaded ignorance. In such circumstances, the court below rightly held that a doubt is raised regarding the involvement of the accused in this case. This may be a case where the bus was repossessed by the financier due to default in payment of installments. The Investigating Officer admitted that no documents were handed over revealing payment of installments to financiers. PW1 also did not produce any document even during trial to evidence that installments were paid by him.

6. I do not find any illegality or impropriety in the order under challenge. The ground raised that the finding of trial court that the

complaint was lodged only on 08.03.1996 is wrong and contrary to the evidence. It is also stated in the grounds that the complaint was given on the very next day and this will be evident from the version given by PW6, Investigating Officer. A reading of the evidence of PW6 will show that the complaint was given only on 08.02.1996 (not on 08.03.1996). Of course, there is a mistake in finding that there is a delay upto 08.03.1996 in lodging the complaint. Ext. P5 First Information Report would also show that the complaint was lodged on 08.02.1996. But, still there is delay. It is not correct to say that PW6 gave evidence that the complaint was given on the next day of the incident itself. The incident, as per the evidence of PW1 and three eye witnesses, occurred on 03.02.1996. There is a delay even though the date noted by court below is erroneous regarding the month.

7. Taking all the facts and circumstances into consideration, I find that prosecution failed to prove its case and hence, order of acquittal is only sustainable. I do not find any reason to interfere with the order of acquittal. This petition is dismissed.

**K. HEMA, JUDGE.**

smp